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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.707 OF 2007

Sulochana w/o. Laxman Bombale — Petitioner
versus
Chintamani Co-op. Credit Society Ltd. and two others — Respondents

A.V.Chatuphale for petitioner.

Mohan Pawar for respondent no.1.

CORAM : A.M.KHANWILKAR, J.

DATE : 26th November 2007

PC :

1. Heard counsel for the parties. Rule. Rule made returnable forthwith by consent, as short question is involved. Mr.Mohan Pawar waives notice for respondent no.1. Respondents 2 and 3 are the Guarantors who did not remain present even before the Lower Courts, as would appear from the record. The main contest is between the petitioner and respondent no.1. Accordingly, the matter proceeds for final hearing by consent.

2. This writ petition takes exception to the

judgement and order passed by the Maharashtra State Co-operative Appellate Court dated 8th January 2007 in Appeal No.80 of 2006.

3. Briefly stated, the respondent no.1 filed dispute before the Co-operative Court for recovery of certain amount from the petitioner-who is stated to be the principal borrower; and respondents 2 and 3 herein- the guarantors in respect of the said loan transaction.

4. According to the respondent no.1 disputant, the petitioner had applied for loan of Rs.1.50 lakh which was duly sanctioned and disbursed to the petitioner. It is the case of the respondent no.1 that the petitioner made repayment of the said loan till February 2003 but failed to pay further instalments. As a result, it became necessary to file dispute for recovery of the said amount. The petitioner after notice appeared in the said proceedings and took diverse contentions.

5. It is not necessary to burden this judgement with all those contentions for the time being. The Co-operative Court passed an award in favour

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of respondent no.1 requiring the petitioner to pay the principal amount as well as interest as claimed by respondent no.1. Being aggrieved, the petitioner carried the matter in appeal before the Co-operative Appellate Court being Appeal No.80 of 2006. According to the petitioner, a specific grievance was made before the Appellate Court that the respondent no.1 society has failed to establish that it had disbursed the stated loan amount of Rs.1.50 lakh to the petitioner as claimed. The Appellate Court has not even adverted to this contention but has proceeded to decide the matter on incorrect premise. The main contention which is pressed before this Court on behalf of the petitioner is that, the Appellate Court has not adverted to any pleadings muchless the evidence to record a clear finding of fact that the respondent no.1 had in fact disbursed the sum of Rs.1.50 lakh to the petitioner, as claimed by them. According to the petitioner, there was sufficient evidence on record to hold to the contrary, as the petitioner no.1-disputant had failed to establish that fact. The petitioner would contend that the Co-operative Court has cursorily dealt with such contention in paragraphs 6 and 7 of its judgement while dealing with issue nos.2 and 3 together. However, the

Appellate Court has not even touched upon that contention at all which is manifest error committed by the Appellate Court.

6. After having considered the rival submissions and going through the pleadings and materials on record, I am in agreement with the grievance made on behalf of the petitioner that in the first instance the Trial Court and at any rate the Appellate Court has failed to address the main grievance made on behalf of the petitioner that the respondent no.1-disputant has failed to establish the factum of disbursement of any amount muchless Rs.1.50 lakh to the petitioner as claimed by them. It is not appropriate for this Court for the first time to analyse the pleadings and evidence, documentary and oral, to which counsel appearing for respective parties have invited my attention. However, in my opinion, the appropriate course is to relegate the parties before the Appellate Court who in turn shall deal with all the materials on record so as to record a clear finding of fact as to whether the respondent no.1 had in fact disbursed the loan amount of Rs.1.50 lakh or any part thereof to the petitioner. In the event such a finding is recorded against the petitioner, no further

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enquiry will be necessary as that is the only argument canvassed before this Court.

7. Accordingly, this petition succeeds on the above terms. The parties are relegated before the Maharashtra State Co-operative Appellate Court, Mumbai. The impugned judgement and order is set aside and the Appeal No.80 of 2006 is restored to the file of the Appellate Court to its original number for being decided on its own merits in accordance with law in view of the observations made herein before.

8. The parties shall appear before the Appellate Court on 14th December 2007 at 11.00 a.m. on which date the Appellate Court may proceed with the hearing of the appeal or assign suitable date on which the appeal will be heard while keeping in mind that the remanded appeal should be disposed of finally not latter than 29th February 2008. The parties through counsel assure to extend necessary co-operation to the Appellate Court for early disposal of the appeal.

9. The office to ensure that the record and proceedings received from the Appellate Court is forwarded to the Appellate Court forthwith and in

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any case before 7th December 2007; if necessary by deputing special messenger so as to ensure that the matter can proceed before the Appellate Court on the assigned date.

10. Petition disposed of on the above terms. No order as to costs.

(A.M.KHANWILKAR, J.)